

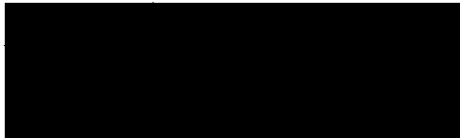


U.S. Department of Justice

Immigration and Naturalization Service

BH

OFFICE OF ADMINISTRATIVE APPEALS  
425 Eye Street N.W.  
ULLB, 3rd Floor  
Washington, D.C. 20536



prevent clearly unwarranted  
invasion of personal privacy

File: [Redacted] Office: Texas Service Center

Date:

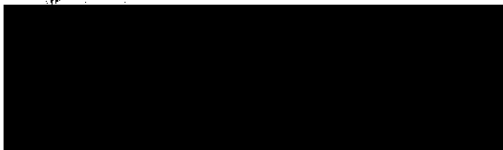
IN RE: Petitioner:  
Beneficiary:



AUG 15 2000  
Public Copy

Petition: Immigrant Petition for Alien Worker as a Multinational Executive or Manager Pursuant to Section 203(b)(1)(C) of the Immigration and Nationality Act, 8 U.S.C. 1153(b)(1)(C)

IN BEHALF OF PETITIONER:



INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,  
EXAMINATIONS

Terrance M. O'Reilly, Director  
Administrative Appeals Office

**DISCUSSION:** The preference visa petition was denied by the Director, Texas Service Center, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be rejected as untimely filed and the matter will be remanded to the director for treatment as a motion to reopen.

The petitioner, a donut business, seeks classification of the beneficiary as an employment-based immigrant pursuant to section 203(b)(1)(C) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1153(b)(1)(C), as a multinational executive or manager, to perform services as its general manager. The director determined that the petitioner had not established that it has been doing business for at least one year.

On appeal, counsel argues that the petitioning entity purchased a pre-existing business and therefore has been in continuous operation for more than one year. Counsel submits additional documentation in support of the appeal.

8 C.F.R. 103.3(a)(2)(v)(B)(1) states, in part, that an appeal which is not filed within the time allowed must be rejected as improperly filed. The director's decision is dated March 19, 1998. The appeal was received on April 24, 1998, 36 days after the director's decision.

The regulation at 8 C.F.R. 103.3(a)(2)(v)(B)(2) states that, if an untimely appeal meets the requirements of a motion to reopen as described in 8 C.F.R. 103.5(a)(2), or a motion to reconsider as described in 8 C.F.R. 103.5(a)(3), the appeal must be treated as a motion, and a decision must be made on the merits of the case.

8 C.F.R. 103.5(a)(2) requires that a motion to reopen state the new facts to be provided in the reopened proceeding, supported by affidavits or other documentary evidence. 8 C.F.R. 103.5(a)(3) requires that a motion to reconsider must state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or Service policy.

The petitioner has provided additional documentary evidence and arguments on appeal. Because the appeal was not timely filed, the appeal is rejected by the Administrative Appeals Office but must be considered by the Texas Service Center as a motion to reopen.

This case will be remanded to the director to determine whether the petitioner has met the eligibility requirements under section 203(b)(1)(C) of the Act. As always in these proceedings, the burden of proof rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. 1361.

**ORDER:** The appeal is rejected as untimely filed. The petition is remanded to the director for further action in accordance with the foregoing and entry of a new decision.